

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Case No. 2:11-cv-12196
Criminal Case No. 2:09-cr-20627

v.

HON. GEORGE CARAM STEEH

ANDRE WALKER,

Defendant.

_____/

ORDER GRANTING MOTION FOR TRANSCRIPTS [#41], DENYING MOTION FOR
SUMMARY JUDGMENT [#46] AND GRANTING DEFENDANT'S MOTION FOR
EXTENSION OF TIME [#49]

On May 19, 2011, defendant, Andre Walker, filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. On September 29, 2011, the court entered an order denying defendant's motion for summary judgment, wherein defendant argued that entry of summary judgment was warranted because the government failed to timely respond to his § 2255 motion. See Dkt. No. 39. The court's September 29, 2011 order noted that it appeared defendant had not received the government's motion for extension of time to file a response, nor the court's order granting same, due to the fact that defendant's former counsel was being served with these documents instead of defendant, who is now proceeding pro se. The court has corrected this oversight so that all future orders will be served upon defendant at his current address. Likewise, the government has served defendant at his current address with a copy of its response. See Dkt. No. 47. Defendant is advised that he is responsible to notify the court if he is transferred to another facility during the pendency of this proceeding.

Accordingly, defendant's second motion for summary judgment is denied as the government did not fail to timely file its response to defendant's § 2255 motion. Defendant's request for additional time to file a reply to the government's response is GRANTED. Defendant shall file his reply to the government's response on or before March 5, 2012.

Defendant also seeks copies of the transcripts from his plea and sentencing hearings. A defendant does not have a constitutional right to a free transcript at government expense in a § 2255 proceeding, however he is entitled to have a free transcript if he demonstrates that his claim is not frivolous and that the transcript is needed to decide the issues presented in his § 2255 case. See 28 U.S.C. § 753(f); United States v. MacCollom, 426 U.S. 317, 325-27 (1976). The court concludes that defendant has demonstrated his entitlement to free copies of the transcripts he requests. Accordingly, the court includes the May 27, 2010 transcript from defendant's plea hearing, as well as the September 9, 2010 transcript from the sentencing hearing along with a copy of this order.

Accordingly,

Defendant's motion for summary/default judgment is DENIED.

Defendant's motion for extension of time is GRANTED. Defendant shall file his reply to the government's response on or before March 5, 2012.

Defendant's motion for transcripts is GRANTED.

SO ORDERED.

Dated: February 3, 2012

S/George Caram Steeh
GEORGE CARAM STEEH

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on February 3, 2012, by electronic and/or ordinary mail and also to Andre Walker at FCI Elkton, P.O. Box 10, Lisbon, OH 44432.

S/Josephine Chaffee
Deputy Clerk